



## **FEDERAL TRADE COMMISSION**

### **16 CFR Part 641**

### **RIN 3084–AB63**

### **Duties of Users of Consumer Reports Regarding Address Discrepancies**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) is issuing a final rule (“Final Rule”) to amend its Duties of Users of Consumer Reports Regarding Address Discrepancies Rule (“Address Discrepancy Rule”) to correspond to changes made to the Fair Credit Reporting Act (“FCRA”) by the Dodd-Frank Act.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** David Lincicum (202-326-2773), Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington DC 20580.

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

##### *A. The Address Discrepancy Rule*

The Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”) was signed into law on December 4, 2003. Public Law 108-159, 117 Stat. 1952. The FACT Act added section 605(h) to the Fair Credit Reporting Act (“FCRA”), which requires a national consumer reporting agency (“CRA”) that receives a request for a consumer report that contains an address substantially different from the address on file for the

consumer to notify the requester of the existence of the discrepancy.<sup>1</sup> Section 605(h) also required federal banking agencies, the National Credit Union Administration and the Commission to issue regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when the user receives a notice of address discrepancy.<sup>2</sup> In 2007, the agencies issued the Address Discrepancy Rule to satisfy this requirement.<sup>3</sup>

The Address Discrepancy Rule requires a user of consumer reports to develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it has requested a consumer report, when the user receives a notice of address discrepancy.<sup>4</sup> Users must also develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed as accurate to the CRA from whom it received the notice when the user 1) can confirm the consumer report relates to the consumer about whom the user requested the report, 2) establishes a continuing relationship with the consumer, and 3) regularly furnishes information about the consumer to the CRA.<sup>5</sup>

#### *B. Dodd-Frank Act*

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) was signed into law in 2010.<sup>6</sup> The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the Consumer Financial Protection Bureau (“CFPB”) the Commission’s rulemaking authority under portions of the FCRA.<sup>7</sup> Accordingly, in 2012,

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<sup>1</sup> Section 605 is codified at 15 U.S.C. 1681c.

<sup>2</sup> 15 U.S.C. 1681c(h)(2).

<sup>3</sup> 16 CFR part 641.

<sup>4</sup> 16 CFR 641.1(c).

<sup>5</sup> 16 CFR 641.1(d).

<sup>6</sup> Pub. L. 111-203 (2010).

<sup>7</sup> 15 U.S.C. 1681 *et seq.* The Dodd-Frank Act does not transfer to the CFPB rulemaking authority for section 615(e) of the FCRA (“Red Flag Guidelines and Regulations Required”) and section 628 of the FCRA (“Disposal of Records”). *See* 15 U.S.C. 1681s(e).

the Commission rescinded several of its FCRA rules, which had been replaced by rules issued by the CFPB.<sup>8</sup> The FTC retains rulemaking authority for other rules promulgated under the FCRA to the extent the rules apply to motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act<sup>9</sup> predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both (“motor vehicle dealers”).<sup>10</sup> The rules for which the FTC retains rulemaking authority include the Address Discrepancy Rule, which now applies only to consumer report users that are motor vehicle dealers.<sup>11</sup> Consumer report users that are not motor vehicle dealers are covered by the CFPB’s rule.<sup>12</sup>

## **II. Regulatory Review of the Address Discrepancy Rule**

On September 15, 2020, the Commission solicited comments on the Address Discrepancy Rule as part of its periodic review of its rules and guides.<sup>13</sup> The Commission sought information about the costs and benefits of the Rule, and its regulatory and economic impact. In addition, the Commission proposed to narrow the scope of the Address Discrepancy Rule to motor vehicle dealers excluded from Consumer Financial Protection Bureau jurisdiction as described in the Dodd-Frank Act.<sup>14</sup> The Commission received one comment.<sup>15</sup>

## **III. Overview of Final Rule**

The Commission adopted the Address Discrepancy Rule at a time when it had rulemaking authority for a broader group of consumer report users. While the Dodd-Frank Act did not change the Commission’s enforcement authority for the Address Discrepancy Rule, it did narrow the Commission’s rulemaking authority with respect to

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<sup>8</sup> 77 FR 22200 (April 13, 2012).

<sup>9</sup> 12 U.S.C. 5519.

<sup>10</sup> 77 FR 22200 (April 13, 2012).

<sup>11</sup> *Id.*

<sup>12</sup> 12 CFR 1022.82.

<sup>13</sup> 85 FR 57172 (September 15, 2020).

<sup>14</sup> 12 U.S.C. 5519.

<sup>15</sup> The comment can be found at [www.regulations.gov/document/FTC-2020-0065-0001](https://www.regulations.gov/document/FTC-2020-0065-0001).

the Rule. It now covers only motor vehicle dealers.<sup>16</sup> The amendments in the Dodd-Frank Act necessitate a technical revision to the Address Discrepancy Rule to ensure the regulation is consistent with the text of the amended FCRA. Accordingly, the Final Rule amends the Address Discrepancy Rule to properly reflect the Rule's scope.

The sole commenter on the Rule stated the Address Discrepancy Rule allowed him to discover a case of identity theft involving the misuse of his Social Security number, and argued the Rule should not be changed.<sup>17</sup> The Commission agrees no changes other than those required by the Dodd-Frank Act are necessary and the Final Rule makes no further amendments to the existing Rule. Although the Commission is revising the scope of the Rule so it is consistent with the applicable statute, the protections provided to consumers will not change: users of consumer reports have the same obligations with respect to address discrepancies under the CFPB's corresponding rule as under the FTC's rule.

#### **IV. Paperwork Reduction Act**

The Address Discrepancy Rule contains information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget ("OMB") regulations that implement the Paperwork Reduction Act ("PRA"). 44 U.S.C. 3501 *et seq.* OMB has approved the Rule's existing information collection requirements through December 31, 2021 (OMB Control No. 3084-0137).

The Final Rule amends 16 CFR part 641. The amendments do not modify or add to information collection requirements previously approved by OMB. The amendments do not make any substantive changes to the Rule, other than to narrow the scope to motor vehicle dealers. The existing clearance already reflects that change in scope.

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<sup>16</sup> 15 U.S.C. 1681s(e)(1); 12 U.S.C. 5519.

<sup>17</sup> John Kahn (comment 1), [www.regulations.gov/document/FTC-2020-0065-0001](https://www.regulations.gov/document/FTC-2020-0065-0001).

Therefore, the Commission does not believe the amendments substantially or materially modify any “collections of information” as defined by the PRA.

## **V. Regulatory Flexibility Act**

The Regulatory Flexibility Act (“RFA”), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to either provide an Initial Regulatory Flexibility Analysis (“IRFA”) with a proposed rule, or certify the proposed rule will not have a significant impact on a substantial number of small entities.<sup>18</sup> The Commission published an Initial Regulatory Flexibility Analysis in order to inquire into the impact of the proposed Rule on small entities.<sup>19</sup> The Commission received no responsive comments.

The Commission does not believe these amendments have the threshold impact on small entities. The amendments effectuate changes to the Dodd-Frank Act and will not impose costs on small motor vehicle dealers because the amendments are for clarification purposes and will not result in any increased burden on any motor vehicle dealer. Thus, a small entity that complies with current law need not take any different or additional action under the Final Rule. Therefore, the Commission certifies the rule will not have a significant economic impact on a substantial number of small businesses.

Although the Commission certifies under the RFA the rule will not have a significant impact on a substantial number of small entities, and hereby provides notice of that certification to the Small Business Administration, the Commission nonetheless has determined that publishing a final regulatory flexibility analysis (“FRFA”) is appropriate to ensure the impact of the rule is fully addressed. Therefore, the Commission has prepared the following analysis:

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<sup>18</sup> 5 U.S.C. 603-605.

<sup>19</sup> 85 FR 57172, 57174 (Sept. 15, 2020).

*A. Need for and Objectives of the Final Rule*

To address the Dodd-Frank Act's changes to the Commission's rulemaking authority the amendments change the scope of the Rule. With this action, the Commission makes the current scope of the Rule clearer.

*B. Significant Issues Raised in Public Comments in Response to the IRFA*

The Commission did not receive any comments that addressed the burden on small entities. In addition, the Commission did not receive any comments filed by the Chief Counsel for Advocacy of the Small Business Administration ("SBA").

*C. Estimate of Number of Small Entities to Which the Final Rule Will Apply*

The Commission anticipates many covered motor vehicle dealers may qualify as small businesses according to the applicable SBA size standards.<sup>20</sup> As explained in the IRFA, however, determining a precise estimate of the number of small entities is not readily feasible. No commenters addressed this issue. Nonetheless, as discussed above, these amendments do not add any additional burdens on any covered small businesses.

*D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed To Comply*

The amendments do not impose any new reporting, recordkeeping, or other compliance requirements.

*E. Description of Steps Taken to Minimize Significant Economic Impact, If Any, on Small Entities, Including Alternatives*

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<sup>20</sup> Table of Small Bus. Size Standards Matched to North American Indus. Classification System Codes, 13 CFR 121.201 (available at: <https://www.sba.gov/document/support--table-size-standards>), updated Aug. 19, 2019. For example, used car dealers are classified as NAICS 441120 and new car dealers as NAICS 441110. Under those standards, the SBA would classify as small businesses independent used car dealers having annual receipts of less than \$27 million and new car dealers having fewer than 200 employees each.

The Commission did not propose any specific small entity exemption or other significant alternatives because the amendments will not increase reporting requirements and will not impose any new requirements or compliance costs.

## **VI. Other Matters**

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

### **Final Rule Language**

#### **List of Subjects in 16 CFR Part 641**

Consumer protection, Credit, Trade Practices

For the reasons stated above, the Federal Trade Commission amends part 641 of title 16 of the Code of Federal Regulations as follows:

1. Revise the authority section for part 641 to read as follows:

**Authority:** Pub. L. 108-159, sec. 315; 15 U.S.C. 1681c(h); 12 U.S.C. 5519(d).

2. In § 641.1, revise paragraph (a) to read as follows:

#### **§ 641.1 Duties of users of consumer reports regarding address discrepancies.**

(a) *Scope.* This section applies to users of consumer reports that are motor vehicle dealers excluded from Consumer Financial Protection Bureau jurisdiction as described in 12 U.S.C. 5519.

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By direction of the Commission.

**April J. Tabor,**

*Secretary.*